

National Park Service, Interior

§ 67.11

for certifying the rehabilitation of historic properties and to consider their adoption for local design review.

§ 67.10 Appeals.

(a) An appeal by the owner, or duly authorized representative as appropriate, may be made from any of the certifications or denials of certification made pursuant to this part or any decisions made pursuant to § 67.6(f). Such appeals must be in writing and received by the Chief Appeals Officer, Cultural Resources, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127, within 30 days of receipt of the decision which is the subject of the appeal. The appellant may request an opportunity for a meeting to discuss the appeal but all information the owner wishes the Chief Appeals Officer to consider must be submitted in writing. The SHPO will be notified that an appeal is pending. The Chief Appeals Officer will consider the record of the decision in question, any further written submissions by the owner, and other available information and shall provide the appellant a written decision as promptly as circumstances permit. Such appeals constitute an administrative review of the decision appealed from and are not conducted as an adjudicative proceeding.

(b) The denial of a preliminary determination of significance for an individual property may not be appealed by the owner because the denial itself does not exhaust the administrative remedy that is available. The owner instead must seek recourse by undertaking the usual nomination process (36 CFR part 60). Similarly, the denial of preliminary certification for a rehabilitation for a rehabilitation project for a property that is not a certified historic structure may not be appealed. The owner must seek a final certification of significance as the next step, rather than appealing the denial of rehabilitation certification. Administrative reviews in these circumstances may be performed at the discretion of the Chief Appeals Officer. The decision to undertake an administrative review will be made on a case-by-case basis, depending on particular facts and circumstances and the Chief Appeals Offi-

cer's schedule, the expected date for nomination, and the nature of the rehabilitation project (proposed, ongoing, or completed). Administrative reviews of rehabilitation projects will not be undertaken if the owner has objected to the listing of the property in the National Register.

(c) In considering such appeals or administrative reviews, the Chief Appeals Officer shall take in account alleged errors in professional judgment or alleged prejudicial procedural errors by NPS officials. The Chief Appeals Officer's decision may:

- (1) Reverse the appealed decision;
- (2) Affirm the appealed decision;
- (3) Resubmit the matter to the appropriate Regional Director for further consideration; or
- (4) Where appropriate, withhold a decision until issuance of a ruling from the Internal Revenue Service pursuant to § 67.6(b)(2).

The Chief Appeals Officer may base his decision in whole or part on matters or factors not discussed in the decision appealed from. The Chief Appeals Officer is authorized to issue the certifications discussed in this part only if he considers that the requested certification meets the applicable statutory standard upon application of the Standards set forth herein or he considers that prejudicial procedural error by a Federal official legally compels issuance of the requested certification.

(d) The decision of the Chief Appeals Officer shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his or her administrative remedies with respect to the certifications or decisions described in this part until the Chief Appeals Officer has issued a final administrative decision pursuant to this section.

§ 67.11 Fees for processing rehabilitation certification requests.

(a) Fees are charged for reviewing rehabilitation certification requests in accordance with the schedule below.

(b) Payment shall not be made until requested by the NPS regional office according to instructions accompanying the Historic Preservation Certification Application. All checks shall